

# LEGAL SANCTIONS

## HISTORICAL OVERVIEW OF WISCONSIN DRINKING DRIVING LAW

**1849** Chapter 33, section 3, Laws of 1849, prohibited the employment of any person to drive a coach or vehicle who is addicted to drunkenness, or to the excessive use of intoxicating liquors. A similar statute, sec. 364.64, Stats., still exists in Wisconsin law.

**1911** Chapter 600, Laws of 1911, published July 15, 1911, prohibits operating, riding or driving a motor vehicle while intoxicated. This appears to be the first reference in Wisconsin Statutes to the actual offense of drunk driving. Also note that riding was included as a part of the offense in 1911. The penalty for first offense was a fine of not less than \$10 nor more than \$50. The penalty for second and subsequent offenses was a fine of not less than \$25 nor more than \$100, or imprisonment for 60 days, or both. See Chapter 73a, s.1636-49 and 54, 1911 Wisconsin Statutes pp. 1092-93.

**1921** Chapter 761 section 1636-49, 1921 Wisconsin Statutes, p.1254, used the same language, “no intoxicated person shall operate, ride, or drive any automobile...”. The penalty section in 1921, section 1636-54, p. 1259, had been changed to read: “Any person who shall operate, ride, or drive any automobile...upon or along any public highway of this state, while intoxicated, shall be punished by a fine of not more than \$100 or by imprisonment in the county jail for not more than six months, or by such fine and imprisonment.” There was no statutory reference to second and subsequent offenses.

**1923** By 1923, the drunk driving provisions were included in the “Law of the Road,” which had been recodified in Chapter 85, Wisconsin Statutes. The provision making riding while intoxicated illegal had been eliminated. Section 85.08, 1923 Wisconsin Statutes read as follows: “[A]nd no intoxicated person shall operate any automobile...”. Section 85.22, 1923 Wisconsin Statutes provided for the following pen-

alty: “Any person who violates...85.08 shall be fined not less than \$10 nor more than \$100, and for a second or subsequent violation thereof in any year shall be fined not less than \$50 nor more than \$500 or imprisoned not exceeding sixty days, or both.”

**1933** Wisconsin Statutes, Sec. 85.13, read as follows: “It shall be unlawful for any person who is a habitual user of narcotic drugs, or who is subject to epilepsy, or any person under the influence of an intoxicating liquor or narcotic drug, to operate any vehicle upon any highway.” Note that the prohibition was once again any vehicle. Section 85.91(3), 1933 Wisconsin Statutes, provided for the following penalty. Any person violating s. 85.13 “...shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished in addition to any other penalty provided by law, by a fine not to exceed \$100 or by imprisonment...for not more than six months, or by both such fine and imprisonment. The operator’s license of such person may also be revoked or suspended for a period not to exceed one year; and for the second or each subsequent conviction within one year thereafter the person shall be punished by a fine not to exceed \$200, or by such imprisonment not to exceed one year, or both...and in addition thereto by suspension or revocation of the operator’s license for not to exceed one year.” This is the first reference in the law to suspension/revocation of the drivers license as a penalty for drunk driving.

**1949** On July 28, 1949, Chapter 534, Laws of 1948-49 amended sec. 85.13 and introduced into Wisconsin law the concept of chemical analysis of breath, blood, urine and saliva as evidence of drunk driving. This new law indicated that blood taken within two hours of arrest which contained (.15) fifteen-hundredths of one percent or more by weight of alcohol in blood could be admitted as prima facie evidence of intoxication, but there also needed to be

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corroborating evidence.

**1957** Chapter 260, Laws of 1957, recodified the Motor Vehicle statutes. This law changed the statutory cite for drunk driving from s. 85.13 to s. 346.63(1), Stats. This statutory cite is where the drunk driving offense is still located. By 1957, the chemical test sections had moved to s. 325.235. Penalties in 1957 remained the same as they were in 1953. See s. 346.65(2), 1957 Wisconsin Statutes.

**1969** Chapter 383, Laws of 1969, created Wisconsin's Implied Consent Law. Under the law, persons who operate motor vehicles on highways are deemed to have given their consent to submit to a chemical test upon request by a police officer.

**1973** Chapter 102, Laws of 1973, changed the prima facie blood alcohol concentration from .15 to .10, but continued the requirement for the need of corroborating evidence. By 1973, the penalty for first offense no longer included the option of jail.

**1981** Chapter 20, Laws of 1981, restructured Wisconsin's OWI law. This law created the offense of intoxication as a matter of law if the person has an alcohol concentration in excess of .1 or more; corroborating evidence is no longer required. It eliminated the ability of prosecutors to plea bargain OWI offenses to lesser offenses. It required alcohol assessment as a condition of sentence for every person convicted of OWI, and it established a surcharge fund for the purpose of helping to underwrite assessment and treatment.

**1983** Chapter 74, Laws of 1983, created an Absolute Sobriety provision for persons under the legal drinking age. In this same legislation the legal drinking age was changed to age 19.

**1985** Wisconsin Act 337 raised the drinking age to 21 effective September 1, 1986 but left the absolute sobriety provision from Chapter 74, Laws of 1983, at age 19. Other changes in statutory rules associated with underage drinking were also made.

**1987** Chapter 3, Laws of 1987, created immediate (30 days after the violation) license suspension for six months (Administrative Suspension) for any person with an alcohol concentration of .1 or greater. This law became effective on January 1, 1988.

**1989** Chapter 105, Laws of 1989, created new OWI statutory provisions for commercial vehicle

operators. This law created an absolute sobriety provision for commercial motor vehicle operators, and reduced the alcohol concentration level to .04 for persons operating commercial motor vehicles. These provisions became effective on January 1, 1991.

**1992** Chapter 277, Laws of 1991, created new penalties and treatment opportunities for OWI repeat offenders. This law included possible seizure of vehicles, increased penalty for Homicide by Intoxicated Use, an alcohol concentration of .08 for persons with two or more offenses, and easier access to treatment. The provisions of this law became effective on January 1, 1993.

**1996** Act 127 amended and expanded the OWI laws to include offenses taking place on rental property and in employee parking lots. The law does not pertain to private parking areas on farms or single-family residences.

**1999** Wisconsin Act 109 increased penalties for repeat offenders, lowered prohibited alcohol concentrations in some instances and expanded the ability for courts to use ignition interlock devices along with other substantive changes.

**2001** Wisconsin Act 16 created a new set of repeat OWI penalties for 2 or more convictions in any five year period: a minimum one year revocation with no occupational licensing during that period; immobilization or IID required on all vehicles; seizure may be ordered on third or subsequent conviction. For the 2nd conviction, the court shall order five days in jail or at least 30 days of community service (this doubled community service time for 2nd offense). Increased the OWI surcharge by \$10 (from \$345 to \$355).

**2003** Wisconsin Act 30 lowered prohibited alcohol content to .08 for all drivers not already held to a lower AC but removed the OWI surcharge and the assessment of drug and alcohol use for first offenses when AC > .08 and < .10. Wisconsin Act 97 made it illegal to operate a motor vehicle with any detectable amount of a controlled substance in one's bloodstream, regardless of whether one is impaired. This proscription extends to the operation of all-terrain vehicles, snowmobiles, firearms and motor boats.

Note: Wisconsin has the distinction of being the only state that does not provide for criminal sanctions or any jail time for first offense OWI convictions. In comparison, first offense shoplifting is a Class A Misdemeanor punishable by a fine of up to \$10,000 and/or up to nine months in jail.

SOURCE: DOT-Bureau of Transportation Safety; DOT-Office of General Counsel

# OWI AND RELATED ALCOHOL PENALTIES (EFFECTIVE DECEMBER 19, 2003)

Conviction <sup>16</sup>	Fine or Forfeiture <sup>9</sup>	Jail	Suspension or Revocation	Occupational License <sup>3</sup>	Assessment <sup>5</sup>	Points <sup>12</sup>
OWI, First <sup>10</sup> [346.63(1)(a),(b)] (Per se AC ≥ .08) [340.01(46m)(a)]	\$150-\$300 <sup>6</sup> [346.65(2)(a)] (plus \$355 OWI surcharge) <sup>14</sup> [346.655]		6-9 month revocation <sup>6</sup> [343.30(1q)(b)2]	Immediately [343.30(1q)(b)2]	YES <sup>14</sup>	6
OWI, Second <sup>10</sup> (Per se AC ≥ .08) [340.01(46m)(b)]	\$350-\$1,100 <sup>6</sup> [346.65(2)(b)] (plus \$355 OWI surcharge)	5 days to 6 months <sup>6</sup> [346.65(2)(b)]	12-18 month revocation <sup>6</sup> [343.30(1q)(b)3] Vehicle immobilized or equipped with IID <sup>8</sup>	After 60 days <sup>23</sup> After 12 months if 2 or more offenses within 5 years [343.30(1q)(b)3] [343.307(1)]	YES	6
OWI, Third <sup>10</sup> (Per se AC ≥ .08) [340.01(46m)(a)]	\$600-\$2,000 <sup>6,11</sup> [346.65(2)(c)] (plus \$355 OWI surcharge)	30 days to 1 year <sup>6</sup> [346.65(2)(c)]	2-3 year revocation <sup>6</sup> [343.30(1q)(b)4] Vehicle immobilized or equipped with IID, or may be seized [346.65(6)(a)1] <sup>8</sup>	After 90 days <sup>23,30</sup> After 12 months if 2 or more offenses within 5 years [343.30(1q)(b)4]	YES	6
OWI, Fourth <sup>10</sup> (Per se AC ≥ .02) [340.01(46m)(c)]	\$600-\$2,000 <sup>6,11</sup> [346.65(2)(d)] (plus \$355 OWI surcharge)	60 days to 1 year <sup>6</sup> [346.65(2)(d)]	2-3 year revocation <sup>6</sup> [343.30(1q)(b)4] Vehicle immobilized or equipped with IID or may be seized <sup>8</sup>	After 90 days <sup>23</sup> After 12 months if 2 or more offenses within 5 years [343.30(1q)(b)4]	YES	6
OWI, Fifth or more <sup>10</sup> (Per se AC > .02) [340.01(46m)(c)]	\$600-\$10,000 <sup>11</sup> [346.65(2)(e)] [939.50(3)(h)] (plus \$355 OWI surcharge)	6 months to 6 years <sup>6</sup> imprisonment [346.65(2)(e)] [939.50(3)(h)]	2-3 year revocation <sup>6</sup> [343.30(1q)(b)4] Vehicle immobilized or equipped with IID or may be seized <sup>8</sup>	After 90 days <sup>23</sup> After 12 months if 2 or more offenses within 5 years [343.30(1q)(b)4]	YES	6
Causing Injury <sup>10</sup> While OWI [346.63(2)(a)]	\$300-\$2,000 <sup>6,11</sup> [346.65(3m)] (plus \$355 OWI surcharge)	30 days to 1 year <sup>6</sup> [346.65(3m)]	1-2 year revocation <sup>6,8</sup> [343.31(3)(c)]	After 60 days After 12 months if 2 or more offenses within 5 years [343.31(3m)(b)]	YES	6
Causing Great <sup>10</sup> Bodily Harm by OWI [940.25(1)]	Up to \$25,000 <sup>6,7,10,11</sup> [939.50(3)(f)] (plus \$355 OWI surcharge)	Up to 12.5 years <sup>6,7,10</sup> imprisonment [939.50(3)(f)]	2 year revocation <sup>6,7,8</sup> [343.31(3)(f)]	After 120 days After 12 months if 2 or more offenses within 5 years [343.31(3m)(a)]	YES	6
Homicide While OWI <sup>10</sup> [940.09(1)]	Up to \$100,000 <sup>6,7,10,11</sup> [939.50(3)(c),(d)] (plus \$355 OWI surcharge)	Up to 25 years or, <sup>6,7,10</sup> if one or more prior OWI-related offense, up to 40 years [930.50(3)(c),(d)]	5 year or 10 year revocation <sup>8</sup> [343.31(3)(c)]	After 120 days After 12 months if 2 or more offenses within 5 years [343.31(3m)(a)]	YES	6
Chemical Test Refusal (First) [343.305(9)]			1 year revocation <sup>6</sup> [343.305(10)(b)2]	After 30 days [343.305(10)(b)2]	YES	0
Chemical Test Refusal (Second) <sup>1</sup> [343.305(9)]			2 year revocation <sup>6,8</sup> [343.305(10)(b)3]	After 90 days <sup>3</sup> After 12 months if 2 or more offenses within 5 years [343.305(10)(b)3]	YES	0
Chemical Test Refusal (Third or greater) <sup>1</sup> [343.305(9)]			3 year revocation <sup>6,8</sup> [343.305(10)(b)4]	After 120 days <sup>3</sup> After 12 months if 2 or more offenses within 5 years [343.305(10)(b)4]	YES	0
Administrative Suspension for Prohibited Alcohol Concentration [343.305(7)]			6 month suspension [343.305(7)(a)]	Immediately [343.305(8)(d)]	NO	0
Open Container (Driver or passenger) <sup>15</sup> [346.935]	\$100 [346.95(2m)]					0

<sup>1</sup> Generally, second offenses are counted within a 10-year period. Third and subsequent are counted within an individual's lifetime dating back to 1/1/89. [346.65(2)(b)-(c), 343.305(10)(b)3-4, 1997 Wis. Act 237- s. 9548(2f)] The 10-year and lifetime periods are measured from the date of refusal or violation that resulted in conviction. [346.65(2c)]

<sup>2</sup> Absolute sobriety is mandatory for an occupational license for persons with two or more suspensions, revocations or convictions. [343.10(5)(a)(2)]

<sup>3</sup> Persons with 2 or more suspensions, revocations or convictions counted under 343.307(1), must complete assessment and be in compliance with a driver safety plan to be eligible for an occupational license. [343.10(2)(c), 343.30(1q)(b)3 and 4]

<sup>4</sup> If repeat offender, court may immobilize, equip with an ignition interlock device (IID) or seize vehicle. [940.09(1d), 940.25(1d)]

<sup>5</sup> Assessments of the offender's use of alcohol or controlled substances are required except for first offenses where alcohol concentration (AC) ≥ .08 and < .10. [343.30 (1q) (c)]

<sup>6</sup> Fines, forfeitures, jail and revocation/suspension penalties are doubled for a person convicted of OWI when a person under 16 years of age was in the vehicle at the time of the offense. [346.65(2)(f) and (2)(d), 343.30(1q)(b)4m, 343.305(10)(b)4m, 343.31(3)(f), 940.25(1)(bm)] For third and subsequent OWI offenses, fines are increased according to AC. [346.65(2)]

<sup>7</sup> Fines, forfeitures, jail, and revocations or suspensions are doubled if a pregnant woman is in the vehicle at the time the driver committed the offense. [343.31(3)(c)(f)]

<sup>8</sup> The vehicle owned by the offender and used in the offense may be immobilized or equipped with IID or the offender's operating privileges may be restricted to vehicles equipped with IID.

<sup>9</sup> [343.301(1)(a) and (2)(a)]. For second or subsequent offenses, if there are 2 or more enumerated offenses committed within any 5 years such operating privilege restrictions are mandatory and all vehicles titled or registered in the offenders' name must be immobilized or equipped with IID. [343.301(1)(a) and (2)(a), 343.305(10m)] For third or subsequent the vehicle may be seized and forfeited. [346.65(6)(a)1]

<sup>10</sup> Additional fees, assessments and surcharges will also apply except for first OWI offense where AC ≥ .08 and < .10 [814.65(1), 814.634(1)(a), 814.635(1)]

<sup>11</sup> If offense is committed while operating a commercial motor vehicle, then penalties will include a 1 year CDL disqualification (3 year disqualification if transporting hazardous materials, or lifetime disqualification for 2nd or subsequent OWI). [343.315(2)(a)(b)(e)]

<sup>12</sup> For third or subsequent OWI offenses, fines are increased according to AC. [346.65(2)(g)]

<sup>13</sup> For the scale of demerit points for all traffic violations, see Trans 101.02, Wisconsin Administrative Code, and 343.32(2); newly licensed and unlicensed drivers may be subject to increased demerit points. [343.32(2)(bc)]

<sup>14</sup> Persons whose operating privileges have been suspended or revoked may apply for an occupational license to drive between home and work or school. [343.10]

<sup>15</sup> No OWI surcharge and no assessment of offender's alcohol or controlled substance use for first offense prohibited alcohol content [346.63(1)(b)] if AC ≥ .08 and < .10. An OWI surcharge and an assessment are required for all first prohibited alcohol convictions where AC ≥ .10 and for all first OWI convictions. [346.655(1), 343.30(1q)(c)1]

<sup>16</sup> Both drivers and passengers can be ticketed for the presence of an unsealed container of an intoxicating beverage in the passenger compartment of a vehicle. [346.935]

<sup>17</sup> Wisconsin Act 97 expands the definition of OWI to include any detectable quantity of a controlled substance. [346.63(1)(am)]

SOURCE: DOT-Bureau of Transportation Safety; DOT-Office of General Counsel

## UNDERAGE ALCOHOL OFFENSES AND RELATED PENALTIES (EFFECTIVE SEPTEMBER 30, 2003)

Conviction	Fine or forfeiture <sup>5</sup>	Driver License Suspension or Revocation	Supervised Work Program	Court Ordered Stay <sup>1</sup>	Assessment <sup>1</sup>
Absolute Sobriety “Not a Drop” Law (If under age 21) [346.63 (2m)]	\$10 <sup>3</sup> [346.65(2q) <sup>3</sup> ]	90 day license suspension [343.30(1p)] Occupational-immediately	No	No	No
Underage Alcohol (Procure or Misrepresent Age) (age 17-20) [125.07(4)(a)] or local ordinance	1st: \$250-\$500 2nd in a year: \$300-\$500 3rd in a year: \$500-\$750 4th & subsequent in a year: \$750-\$1,000 [125.07(4)(bs)]	1st: 30-90 day <sup>4</sup> suspension 2nd: up to 1 yr. suspension <sup>2</sup> 3rd & subsequent: up to 2 yr. suspension <sup>2</sup> [343.30(6)(b)]	Yes-Court option as an alternative [125.07(4)(bs)]	Yes-Court option as an alternative [125.07(4)(e)2]	Optional [125.07(4)(e)2a]
Juvenile Alcohol (Procure or Misrepresent Age) (under 17) [125.07(4)(a)] or local ordinance	1st: \$250-\$500 2nd in a year: \$300-\$500 3rd & subsequent in a year: \$500 [938.344(2b)(a)-(c)]	1st: 30-90 day <sup>4</sup> suspension 2nd: up to 1 yr. suspension <sup>2</sup> 3rd & subsequent: up to 2 yr. suspension <sup>2</sup> [343.30(6)(b)]	Yes-Court option as an alternative [938.344(2b)]	Yes-Court option as an alternative [938.344(2g)(a)]	Optional [938.344(2g)(a)1]
Underage Alcohol (Possess or Consume) (age 17-20) [125.07(4)(b)] or local ordinance	1st: \$100-\$200 2nd in a year: \$200-\$300 3rd in a year: \$300-\$500 4th & subsequent in a year: \$500-\$1,000 [125.07(4)(c)]	1st: 30-90 day <sup>4</sup> suspension 2nd: up to 1 yr. suspension <sup>2</sup> 3rd & subsequent: up to 2 yr. suspension <sup>2</sup> [343.30(6)(b)]	Yes-Court option as an alternative [125.07(4)(c)]	Yes-Court option as an alternative [125.07(4)(e)2]	Optional [125.07(4)(e)2a]
Juvenile Alcohol (Possess or Consume) (under 17) [125.07(4)(b)] or local ordinance	1st: Up to \$50 2nd in a year: Up to \$100 3rd & subsequent in a year: up to \$500 [938.344(2)(a)-(c)]	1st: 30-90 day <sup>4</sup> suspension 2nd: up to 1 yr. suspension <sup>2</sup> 3rd & subsequent: up to 2 yr. suspension <sup>2</sup> [343.30(6)(b)]	Yes-Court option as an alternative [938.344(2)]	Yes-Court option as an alternative [938.344(2g)(a)]	Optional [938.344(2g)(a)1]
Underage False ID (Use or Possess) (age 17-20) [125.085(3)(b)]	\$300-\$1250 [125.085 (3)(bd)]	30-90 days <sup>4</sup> [343.30(6)(bm)]	Yes-Court option as an alternative [125.085(3)(bd)]		
Juvenile False ID (Use or Possess) (under 17) [125.085(3)(b)]	1st: \$100-\$500 2nd in a year: \$300-\$500 3rd & subsequent in a year: \$500 [938.344(2d)(a)-(c)]	1st: 30-90 day <sup>4</sup> suspension 2nd: up to 1 yr. suspension 3rd & subsequent: up to 2 yr. suspension [343.30(6)(b)]	Yes-Court option as an alternative [938.344(2d)]	Yes-Court option as an alternative [938.344(2g)(a)]	Optional [938.344(2g)(a)1]
Intoxicants In Vehicle (Underage Persons) [346.93]	\$20-\$400 [346.93(2g)]	1st: 30 day - 1 yr. suspension 2nd: up to 1 yr. suspension <sup>2</sup> 3rd & subsequent: up to 2 yr. suspension <sup>2</sup> [343.30(2m),(6)(b)]	No	No	No

<sup>1</sup>Court may stay enforcement of the sentence if the defendant agrees, and in turn, the court may condition the stay on voluntary assessment and participation in a court-approved alcohol abuse education program or enrollment in a treatment program; however, the court may not stay, suspend or modify a mandatory drivers license suspension.

<sup>2</sup>Suspension is permissive for 1st offense, but mandatory for 2nd and subsequent offenses that involve a motor vehicle.

<sup>3</sup>Forfeiture, costs and period of suspension are doubled when a person under 16 years of age was in the vehicle at the time of the offense. [343.30(1p)]

<sup>4</sup>If a person does not hold a valid license at the time of disposition, the suspension period begins when they first apply for a license or two years from the disposition. [343.30(6)(d)]

<sup>5</sup>Additional fees, assessment and surcharges will apply.

## COMMENTS ON PENALTIES FOR UNDERAGE ALCOHOL OFFENSES

Persons whose licenses are suspended or revoked for underage drinking violations other than *Absolute Sobriety* are eligible for occupational licenses 15 days after the suspension or revocation begins. [343.10(2)(a)4] Those whose licenses are suspended for violating the *Absolute Sobriety* or “Not a Drop” law are eligible for occupational licenses immediately.

Like persons aged 21 or older, underage persons are subject to the provisions of Wisconsin laws prohibiting operating/driving motor vehicles while intoxicated. These laws include impairment/intoxication resulting from the use of illegal, over the counter or prescription drugs or combinations of drugs or alcohol. It is illegal in Wisconsin to operate snowmobiles, all-terrain vehicles, motor boats, aircraft and other motor vehicles while under the influence of alcohol or drugs or a combination of alcohol and drugs.

Underage Alcohol conviction records are largely confidential. The Department of Transportation may not disclose information concerning a suspension, revocation or restriction as a result of an underage alcohol conviction to any person other than a court, district attorney, municipal prosecuting attorney, law enforcement agency, the underage individual or his/her parents or legal guardian. [343.30(5), 343.24(3)]

SOURCE: DOT-Bureau of Transportation Safety; DOT-Office of General Counsel

# COMMERCIAL DRIVER LICENSE ALCOHOL AND OTHER DRUG OFFENSES AND RELATED PENALTIES (EFFECTIVE SEPTEMBER 30, 2003)

Violation in CMV	Fine/Forfeiture/Jail <sup>3</sup>	Effect on CDL	Effect on Class D/M License	Occupational License (class D/M) <sup>6</sup>
AC ≥ .04 and < .08 <sup>2,4</sup> 1st Offense [346.63(5)]	\$150-\$300 forfeiture <sup>18</sup> [346.65(2)(a)]	1 Yr Disq 3 Yr Disq if "H" [343.315(2)(a),(b)]	Subject to 24-hour license seizure <sup>5</sup> [343.305(7)(b)]	After 15 days [343.10(2)(a)]
AC ≥ .04 and < .08 <sup>2,4</sup> 2nd Offense	\$300-\$1,000 fine <sup>18</sup> 5 days-6 mo jail [346.65(2)(b)]	Lifetime Disq [343.315(2)(c)]	Subject to 24-hour license seizure <sup>5</sup> [343.305(7)(b)]	After 15 days [343.10(2)(a)]
AC ≥ .04 and < .08 <sup>2,4</sup> 3rd or Subsequent Offense	\$600-\$2000 fine <sup>18</sup> 30 days-1 yr jail [346.65(2)(c)]	Lifetime Disq [343.315(2)(c)]	Subject to 24-hour license seizure <sup>5</sup> [343.305(7)(b)]	After 15 days [343.10(2)(a)]
AC ≥ .04 and < .08 <sup>2</sup> Causing Injury [346.63(6)]	\$300-\$2,000 <sup>6,7,8</sup> 30 days-1 yr jail [346.65(3m)]	1 Yr Disq/3 yr if "H" (life for 2nd offense) [343.315(2)(a),(b),(c)]	1 year revocation <sup>1</sup> [343.31(1)(ar),(3)(a)]	After 15 days [343.10(2)(a)4]
AC ≥ .04 and < .08 Causing Great Bodily Harm [940.25(1)(bm)]	Up to \$25,000 <sup>6,7,8</sup> up to 12.5 yrs jail [939.50(3)(d),(f)]	1 Yr Disq/3 yr if "H" (life for 2nd offense) [343.315(2)(a),(b),(c)]	2 year revocation <sup>17</sup> [343.31(3)(f)]	After 120 days, or if 2 or more offenses within 5 years, after 1 year [343.31(3m)(a)]
AC ≥ .04 and < .08 Causing Death [940.09(1)(bm)]	Up to \$100,000 <sup>6,7,8</sup> up to 40 yrs jail [939.50(3)(c),(d)]	1 Yr Disq/3 yr if "H" (life for 2nd offense) [343.315(2)(a),(b),(c)]	5 year revocation <sup>1</sup> [343.31(3)(c)]	After 120 days, or if 2 or more offenses within 5 years, after 1 year [343.31(3m)(a)]
Chemical Test Refusal <sup>4</sup> 1st Offense [343.305(9)(am)]		1 Yr Disq 3 Yr Disq if "H" [343.315(2)(a),(b)]	1 year revocation <sup>5</sup> [343.305(10)(b)2]	After 30 days [343.305(10)(b)2]
Chemical Test Refusal <sup>4</sup> 2nd Offense (Within 10 years) [343.305(9)(am)]		Lifetime Disq [343.315(2)(c)]	2 year revocation <sup>95</sup> [343.305(10)(b)3]	After 90 days, or if 2 or more offenses within 5 years, 1 year [343.305(10)(b)3]
Chemical Test Refusal <sup>4</sup> 3rd Offense (Within lifetime) [343.305(9)(am)]		Lifetime Disq [343.315(2)(c)]	3 year revocation <sup>95</sup> [343.305(10)(b)4]	Yes (120 days, or if 2 or more offenses within 5 years, after 1 year) [343.305(10)(b)4]
Using a CMV to make, dispense, or distribute drugs feloniously	Varies depending upon drug crime	Lifetime Disq [343.315(2)(c)]	1 year revocation [343.31(1)(c),(3)(a)]	After 15 days [343.10(2)(a)4]
Any measurable alcohol concentration (AC > 0.0 and < .04), possession of alcohol, operation within 4 hours after consuming [346.63(7)]	\$10 [346.65(2u)(a)]	24 Hr Out-of-Service [346.65(2u)(b)] [343.315(2)(g)]		

<sup>1</sup> Fines, forfeitures, jail and revocation/suspension penalties are doubled for a person convicted of OWI when a person under 16 years of age was in the vehicle at the time of the offense. [343.30(1q)(b)4m and (3)(e), 343.305(10)(b)4m, 346.65(2)(d),(2q) and (3m)] For third and subsequent regular OWI offenses, fines are also increased according to blood alcohol level. [346.65(2)(g)]  
<sup>2</sup> If AC meets or exceeds .10 or the prohibited alcohol concentration as defined in 340.01(46m), the offense is punishable under 346.63(1) or 346.63(2)(b), with CDL disqualification under 343.315.  
<sup>3</sup> Additional fees, assessments and surcharges will apply.  
<sup>4</sup> Prior offenses counted include injury or homicide by intoxicated motor vehicle use, and other OWI-related offenses committed after January 1, 1989.  
<sup>5</sup> License subject to 24-hour seizure if AC > 0.0 or if driver refuses to take an AC test. [343.305(9)(am)]  
<sup>6</sup> No occupational license can authorize the operation of a commercial motor vehicle during the time of CDL disqualification. [343.10(2)(c)]  
<sup>7</sup> Fines, jail penalties and revocation periods are doubled if a pregnant woman is present in the vehicle at the time of the offense. [343.31(3)(f), 940.09(1b), 940.25(1)(b)]  
<sup>8</sup> Plus OWI \$355 surcharge [346.655].  
<sup>9</sup> The vehicle owned by the offender and used in the offense may be immobilized or equipped with an ignition interlock device (IID), or the offender's operating privilege for class D vehicles may be restricted to operating only Class D vehicles equipped with an IID. [343.301(1)(a), 343.301(2)(a), 343.305(10m)]

Note: Similar convictions in other jurisdictions may cause a driver to lose her or his Commercial Driver License.

CMV = Commercial motor vehicle  
OWI = Operating while intoxicated  
Disq = Disqualified (cannot drive CMV or get CDL-OCC)  
OCC = Occupational license  
CDL = Commercial driver license  
AC = Alcohol concentration  
"H" = Hauling hazardous materials requiring placarding [343.125] at time of offense  
NA = Not applicable

SOURCE: DOT-Bureau of Transportation Safety; DOT-Office of General Counsel

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## CASE LAW UPDATE

### IMPLIED CONSENT LAW

**Village of Little Chute v. Walitalo**, 2002 WI App 211, 256 Wis. 2d 1032, 650 N.W.2d 891. The defendant argued that his consent to submit to a blood test was coerced in that the Informing the Accused form threatened the sanction of lost driving privileges, which invalidated his consent. The court of appeals concluded that when an arresting officer reads the Informing the Accused form, he or she is simply stating the truth; namely, if you refuse to submit to a chemical test, your driving privileges will be revoked. Such a statement does not involve deceit or trickery, but accurately informs a driver of his or her legal situation.

**State v. Wintlend**, 2002 WI App 314, 258 Wis. 2d 875, 655 N.W.2d 745. This decision revisits the same issue addressed in *Walitalo*. Specifically, that the Informing the Accused form contained a threatened sanction of loss of driving privileges unless defendant consented to taking a blood alcohol test. The court of appeals reasoned that when a person applies for and receives a driver's license, that person submits to the legislatively imposed condition that, upon being arrested for driving while under the influence, he or she consents to submit to the prescribed chemical tests. Further, the court recognized the compelling need to get intoxicated drivers off the highways due to the hazard they pose to public safety.

**State v. Marshall**, 2002 WI App 73, 251 Wis. 2d 408, 642 N.W.2d 571. The court of appeals held that a suspect's right of refusal under the implied consent law is limited to the right to refuse to submit to a voluntary blood draw. Here, the defendant consented to a blood draw only after officers showed him the straps they would use to restrain him if he did not voluntarily submit. The court of appeals reaffirmed established case law that held voluntary testing under the implied consent law is not the exclusive means for obtaining a chemical test.

### SEARCH AND SEIZURE

**State v. Williams**, 2002 WI 94, 255 Wis. 2d 1, 646 N.W.2d 834. The Wisconsin Supreme Court concluded that because the officer terminated the initial traffic stop by issuing a warning citation and telling Williams he was free to leave, the officer's subsequent questioning did not constitute a new seizure. The court reasoned that the request for consent did not constitute a separate seizure requiring justification; but was a consensual encounter. Thus, Williams' consent to search the vehicle was valid. Therefore, the drugs and the gun that were seized during the search should not have been suppressed.

**State v. Miller**, 2002 WI App 150, 256 Wis.2d 80, 647 N.W.2d 348. The court of appeals reaffirmed that under the Supreme Court's interpretation of the Fourth Amendment, dog sniffs are not searches. Here, officers were executing a search warrant of a residence. After discovering some marijuana, an officer took a dog trained in detecting the odor of contraband to walk around the cars parked near the residence. The dog alerted the officer to a car that belonged to Miller. The court concluded that

once the dog indicated that Miller's vehicle contained a controlled substance, the officer had probable cause to search both the car and the purse.

### SENTENCING ISSUES

**State v. Smart**, 2002 WI App 240, 257 Wis 2d 713, 652 N.W.2d 429. The court of appeals held that the judicial sentencing guidelines did not violate the defendant's constitutional rights. Specifically, the guidelines are designed to reduce sentencing disparity within judicial districts. The court concluded that because sentencing is a discretionary act and the guidelines are not mandatory, any disparity within the same judicial district was within a court's discretion. Here, the court chose to sentence defendant under the applicable guidelines and the record reflected the proper exercise of discretion.

**State v. Champion**, 2002 WI App 267, 258 Wis. 2d 764, 654 N.W.2d 242. The defendant sought a sentence modification because she would complete all the available rehabilitation programs prior to her release date. The court looked to the legislative intent of the truth-in-sentencing law, which defendant was sentenced under. The court concluded that the legislature intended for truth-in-sentencing to create certainty in the duration of confinement at the time of sentencing. Therefore, the court held that events subsequent to sentencing and relating to rehabilitation do not constitute a new sentencing factor to support a sentence modification.

**State v. Naydihor**, 2002 WI App 272, 258 Wis. 2d 746, 654 N.W.2d 479. On resentencing for causing great bodily harm by intoxicated use of a motor vehicle, the judge increased defendant's sentence based on the victim's updated physical and financial condition. The court of appeals concluded that a resentencing court could consider any relevant information pertaining to the defendant or the victim that developed since the original sentence. The court of appeals held that the resentencing judge's departure from the original sentence was justified based upon the new information concerning the victim's physical and financial condition. *Note: The Wisconsin Supreme Court accepted review on October 1, 2003.*

### BLOOD TEST ISSUES

**State v. Krajewski**, 2002 WI 97, 255 Wis. 2d 98, 648 N.W.2d 385. The Wisconsin Supreme Court held that a person's agreement to submit to a chemical test of that person's choice does not negate the exigency created by the rapid dissipation of alcohol in the bloodstream that justifies a nonconsensual, warrantless blood draw of a person arrested for OWI. The supreme court concluded that the blood draw in this case satisfied the factors enumerated in *State v. Bohling*, 173 Wis. 2d 529, 494 N.W.2d 399 (1993). Specifically, the blood was taken to obtain evidence of intoxication after Krajewski was arrested for OWI, there was probable cause to believe the blood draw would produce evidence of intoxication, the blood sample was taken in a reasonable manner, and Krajewski presented no reasonable objection. Therefore, the blood draw was reasonable and constitutional.

SOURCE: University of Wisconsin Law School Resource Center on Impaired Driving